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TRANSCRIPT OF RECORD

537028

Supreme Court of the United States

OCTOBER TERM, 1942

No. 275

PACIFIC COAST DAIRY, INC., APPELLANT,

vs.

DEPARTMENT OF AGRICULTURE OF THE STATE OF CALIFORNIA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED JULY 31, 1942.

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[fol. 1] [File endorsement omitted]

[fol. 2] **IN SUPREME COURT OF CALIFORNIA**

No. 16694

PACIFIC COAST DAIRY, INC., a corporation, Petitioner,

vs.

DEPARTMENT OF AGRICULTURE OF THE STATE OF CALIFORNIA; William J. Cecil, Director of Agriculture of the State of California; Bureau of Market Enforcement of the State of California; C. J. Carey, Chief; E. E. Brown, Auditor of the Bureau of Market Enforcement of the Department of Agriculture of the State of California, Respondents

PETITION FOR WRIT OF MANDAMUS—Filed November 18, 1941

To the Honorable Phil S. Gibson, Chief Justice, and to the Associate Justices of the Supreme Court of the State of California:

Your petitioner, Pacific Coast Dairy, Inc., respectfully shows:

I

That it is the real party in interest in the above entitled action.

II

That at all times herein mentioned Pacific Coast Dairy, Inc. was, and is now, a corporation organized and existing under the laws of the State of California, and doing busi-
[fol. 3] ness in the San Francisco County Marketing Area, San Mateo County and in the Santa Clara County Marketing Area, State of California, and was, and now is, a distributor of fluid milk as that term is defined in Section 735.3, Subdivision (f) of the Agricultural Code of this State, and that at all of the times herein mentioned Pacific Coast Dairy, Inc., a corporation, was, and now is, licensed as a distributor of fluid milk, in accordance with and by virtue of the aforesaid Chapter 10, division IV of the Agricultural Code.

III

That an order to show cause has been issued to the said Pacific Coast Dairy, Inc., petitioner, why its license should not be suspended, or revoked, or such other action taken in relation thereto as is provided by the Agricultural Code, Section 737.7 a, b and c, as well as other provisions of the Agricultural Code, which order to show cause is returnable on Friday, the 21st day of November, 1941, at the hour of 2:00 o'clock P. M. in the office of the District Supervisor, in the State Agriculture Building, Embarcadero at Mission Street, San Francisco; that said order to show cause is based upon a complaint filed by one E. E. Brown, Auditor of the Bureau of Market Enforcement and respondent here, and a copy of this order to show cause and the complaint upon which it is based is annexed hereto and made a part hereof as Exhibits A and B.

IV

[fol. 4] That the Director of Agriculture and the other respondents herein have no power or authority or jurisdiction over the petitioner herein for the acts set forth in said complaint; that on or about October 15th, 1941, as set forth in said complaint, the petitioner corporation entered into a contract with the War Department of the Federal government, signed by the Quartermasters' Department of Moffett Field, whereby said petitioner agreed to deliver and sell to said War Department fluid milk for $0.025 for half-pint, which the complaint alleges is less than the minimum wholesale price established in the Santa Clara Marketing Area; that said respondents and said Department of Agriculture have no control, authority or power over said contract with the Government of the United States; that their jurisdiction does not extend over any of the acts set forth in said complaint, but that said acts were all committed, to-wit, sales and delivery, within the exclusive jurisdiction of Federal Territory; to-wit, Moffett Field, over which the State of California, or Department of Agriculture has no sovereignty, and the acts of the respondents constitute a wrongful and unlawful interference with the administration of Moffett Field by the War Department of the Federal government and with the contracts thereof; that the proceedings set forth herein and all other proceedings of a punitive nature found in the Agricultural Code

are void and an unwarranted interference with the Federal government's exclusive jurisdiction over Moffett Field.

[fol. 5]

V

That your petitioner has no plain, speedy or adequate remedy at law and the revocation of the license of your petitioner would cause irreparable damage and hardship to the business of your petitioner in the marketing areas set forth in said complaint, and petitioner could not be compensated in damages and will suffer more damage than will be suffered by the respondents herein if they fail to accomplish the revocation of said license, or take other proceedings, civil or criminal, under the Agricultural Code.

VI

That application is made to this Court originally for said Writ of Mandamus on account of the great importance of the issues involved, and involves the constitutionality of the Agricultural Code in its enforcement provisions, as applied and interpreted by the enforcement officers and the Director of Agriculture, respondents, and, particularly, the new Amendments to said Agricultural Code, Sections 6 and 7 of 736.3 of the Agricultural Code; whereas, if properly construed and interpreted, said sections would not necessarily be unconstitutional;

Furthermore, there is pending in this Court at the present time the case of Consolidated Milk Producers for San Francisco, a corporation, Petitioner, v. William B. Parker, Director of Agriculture of the State of California, Respondent, S. F. No. 16,589, which is set for argument on Decem-
[fol. 6] ber 3, 1941 before the above entitled Court, in which the issues are exactly the same as in this application, with the exception of the Amendments of 1941 herein referred to, which, we maintain, do not change the law in any particular. In the meantime it is unjust that prosecutions and hearings for revocation of license should continue against your petitioner, or other milk distributors, until these issues are finally set at rest. The whole controversy may be determined at one time; the same authorities apply to both proceedings, and it is unjust that your petitioner who is the real party in interest should be subjected to such prosecutions or hearings until the controversies are finally determined.

VII

That by the Constitution of the United States it is provided as to powers of the Congress (Section VIII, Paragraph 17 of Article I):

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles Square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; —And

"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all [fol. 7] other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

That for more than fifteen years ago Moffett Field was purchased by the Government of the United States for erecting forts, magazines, arsenals, dock-yards and other needful buildings, and the Government of the United States still occupies Moffett Field and uses it for the same purposes; that by Section 34 of the Political Code it is provided:

"Legislative consent to purchase, etc. of lands by United States for public use; jurisdiction over. The legislature consents to the purchase or condemnation by the United States of any tract of land within this state for the purpose of erecting forts, magazines, arsenals, dock-yards, and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made."

Therefore all authority or State sovereignty has ceased over said Moffett Field and the sovereignty belongs to the Government of the United States.

VIII

When, therefore, a purchase of land for any of these [fol. 8] purposes is made by the national government, and the state legislature has given its consent to the purchase, the land so purchased, by the very terms of the Constitution, ipso facto falls within the exclusive legislation of Congress, and the state jurisdiction is completely ousted. This is the necessary result, for exclusive jurisdiction is the attendant upon exclusive legislation; and the consent of the state legislature is, by the very terms of the Constitution, by which all the states are bound, and to which all are parties, a virtual surrender and cession of its sovereignty over the place. (Mr. Justice Story.)

IX

That your petitioner has no plain, speedy or adequate remedy at law and untold damage will result to this petitioner if these proceedings are permitted to go forward; that there is absolute lack of jurisdiction for them and they are unwarranted interference with the administration of the War Department of the United States Government, and an impairment of our dual form of government and a conflict between our state administration and the Federal administration, which should not be tolerated. Your petitioner will therefore be deprived of its property by the acts of the law enforcement officers of the state government, respondents here, without due process of law under the Fourteenth Amendment of the Constitution of the United States.

Wherefore, petitioner prays that an Alternative Writ of [fol. 9] Mandamus issue to the respondents here by Order of this Court restraining them, and each of them, in the meantime from taking any further proceedings by way of hearings, or revocation of license under Section 737.11 of the Agricultural Code, until the hearing and decision of the above entitled Court on this petition, and we ask that the matter be set for hearing at the same time as the companion case herein referred to on the 3rd day of December, 1941, and that a Writ of Mandamus issue directed to re-

spondents ordering them to set aside the order to show cause and dismissing the proceedings set forth herein.

Pacific Coast Dairy, Inc., a Corporation, by Dennis McCarthy, Vice-President.

Vincent W. Hallinan, Carey Van Fleet, Attorneys for Petitioner.

[fol. 10] *Duly sworn to by Dennis McCarthy. Jurat omitted in printing.*

Admission of service of a copy of the within application for a Writ of Prohibition is hereby admitted this — day of November, 1941.

Department of Agriculture of the State of California; William J. Cecil, Director of Agriculture of the State of California; Bureau of Market Enforcement of the State of California: C. J. Carey, Chief; E. E. Brown, Auditor of the Bureau of Market Enforcement of the Department of Agriculture of the State of California, Respondents, by Earl Warren, Attorney General,

By W. R. Augustine, Deputy.

[fol. 11] EXHIBIT "A" TO PETITION

Before the Department of Agriculture, Bureau of Market Enforcement, State of California

SF M-250

E. E. BROWN, Complainant,

vs.

PACIFIC COAST DAIRY, INC., a Corporation, Respondent

ORDER TO SHOW CAUSE WHY LICENSE SHOULD NOT BE DENIED

Upon Reading And Filing the attached verified complaint, a copy of which is hereto affixed, and hereof made a part,

And It Appearing therefrom that the respondent above named has violated the Agricultural Code of the State of California, as more fully appears from the attached,

And Good Cause Appearing,

It Is Ordered:

That respondent above named appear before Mr. C. J. Carey, Chief, Bureau of Market Enforcement, State Depart-

ment of Agriculture, at Room 23, Agriculture Building, Embarcadero at Mission, San Francisco, California, on Saturday, the 15th day of November, 1941, at the hour of [fol. 12] 9:30 o'clock a. m. then and there to show cause, if any it has, why respondent's license as a distributor of fluid milk, previously issued by said Department and Bureau, should not be suspended or revoked or such other action taken in relation thereto as is by said Agricultural Code in such cases provided;

It Is Further Ordered that upon the failure of respondent to appear in answer thereto, such action as may be proper in the premises be taken forthwith.

C. J. Carey, Chief, Bureau of Market Enforcement, by (Signed) R. I. Morse, District Supervisor.

Dated: This 5th day of November, 1941.

[fol. 13] EXHIBIT "B" TO PETITION

State of California, Department of Agriculture, Bureau of Market Enforcement

SF M-250

Verified Complaint

E. E. BROWN, Complainant,

vs.

PACIFIC COAST DAIRY, INC., a Corporation, Respondent

VIOLATION OF DIVISION IV, CHAPTER 10 OF THE AGRICULTURAL CODE AND OF STABILIZATION AND MARKETING PLANS FOR FLUID MILK, SANTA CLARA MARKETING AREA

Complainant alleges:

I

That he is a duly authorized, appointed and acting auditor of the Bureau of Market Enforcement, California State Department of Agriculture, and as such is charged with the enforcement of Chapter 10, Division IV of the Agricultural Code of the State of California; that he is a con-

sumer of fluid milk within the meaning of Section 735.3, Paragraph J of the Agricultural Code; that he is an interested party within the meaning of Section 737.11 of the Agricultural Code.

II

That at all times herein mentioned the respondent [fol. 14] Pacific Coast Dairy, Inc., was and now is a corporation organized and existing under the laws of the State of California and doing business in the San Francisco County Marketing Area, San Mateo County and in the Santa Clara County Marketing Area, State of California and was and now is a distributor of fluid milk as that term is defined in Section 753.3, Subdivision F of the Agricultural Code in this State, and was and now is engaged in the business of selling and distributing fluid milk in the Santa Clara County Marketing Area, State of California; that at all times herein mentioned, Pacific Coast Dairy, Inc., was and now is licensed as a distributor of fluid milk in accordance with and by virtue of the aforesaid Chapter 10, Division IV of the Agricultural Code.

III

That at all times herein mentioned there was and now is in full force and effect General Order No. 98 of the Director of Agriculture of the State of California duly and regularly approved, formulated, ordered and established under and in accordance with the provisions of the Agricultural Code of the State of California, which said General Order No. 98 describes the Santa Clara County Marketing Areas as follows:

"All of Santa Clara County excluding that portion of said County which lies north and east of Arastradero Road beginning at a point where said Road intersects the Boundary of San Mateo and Santa Clara County and following north and east along said Arastradero Road until said Road intersects with U. S. Highway No. 101, Alternate, [fol. 15] thence following along Charleston Road to a Point where said Road intersects Adobe Creek, thence following Adobe Creek to its outlet in San Francisco Bay."

A copy of said General Order No. 98 is atached hereto, made a part hereof and marked "Exhibit A".

IV

That at all times herein mentioned there was and now is in full force and effect in the said Santa Clara County Marketing Area, State of California, a stabilization and Marketing plan, duly and regularly approved, formulated, ordered and established by the Director of Agriculture of the State of California under and in accordance with the provisions of the Agricultural Code of the State of California; copy of said Stabilization and Marketing Plan is attached hereto, made a part hereof and marked "Exhibit B".

V

That at all times herein mentioned there were and now are in full force and effect in said Santa Clara County Marketing Area, State of California, schedules of minimum wholesale and minimum retail prices for fluid milk, duly and regularly approved, formulated, ordered and established by the Director of Agriculture of the State of California, under and in accordance with the provisions of the Agriculture Code of the State of California; a copy of said schedules of minimum wholesale and minimum retail prices for fluid milk are attached thereto, made a part hereof and marked "Exhibit C".

[fol. 16]

VI

That Moffett Field is located in Santa Clara County at Mountain View about 35 miles southeast of San Francisco, California, and is situated in the geographical area within the outer, outside and external boundaries or limits of the Santa Clara Marketing Area as described in General Order No. 98 of the Director of Agriculture of the State of California.

VII

That on or about October 15, 1941, the respondent corporation entered into a contract with the War Department of the Federal Government signed by the Quartermaster's Department of Moffett Field whereby said respondent agreed to deliver and sell to said War Department fluid milk for $0.025 per half-pint, which price is less than the minimum wholesale price established for fluid milk in half-pint containers in said Santa Clara Marketing Area.

VIII

That on or about November 1, 1941, said respondent did purchase, process, bottle, transport and deliver fluid milk in the Santa Clara County Marketing Area, which milk was sold or disposed of by the respondent corporation in accordance with the above mentioned contract at less than the minimum wholesale prices effective in the Santa Clara County Marketing Area, to the Federal Government at Moffett Field, all of which is contrary to and constitutes a violation of the terms and provisions of the Stabilization [fols. 17-18] and Marketing Plans of the Santa Clara Marketing Area as set forth in Exhibit B and more particularly the terms and provisions of said Chapter 10, Division IV of the Agricultural Code, Section 736.3, Paragraph A, Subsection 6;

Wherefore complainant prays that this complaint be filed and that the Director of Agriculture call and hold a hearing thereon in accordance with the applicable provisions of the Agricultural Code; that the Director of Agriculture, after such hearing, enter into his office a decision specifying the facts established at such hearing, and include in said decision an order revoking the license of respondent as a milk distributor; that said Director do any and all other things and issue any and all other orders which said Director may deem fitting and proper in accordance with his powers and the provisions of the law applicable thereto.

(Signed) E. E. Brown.

Duly sworn to by E. E. Brown. Jurat omitted in printing.

[fol. 19] In Supreme Court of California

[Title omitted]

Points and Authorities on Petition for Writ of Mandamus—Filed November 18, 1941

To the Supreme Court of the State of California:

Petitioner herein respectfully submits the following points and authorities in connection with the petition for an Alternative Writ of Mandamus.

Why can a state by virtue of its control over these milk distributors on account of activities outside Moffett Field impose convictions upon them, or control them in any way, because of things done in Moffet Field? A plain question by one of the Judges of this Court heretofore interposed in a previous hearing, and a plain answer in the following authorities:

Collins v. Yosemite Park, Etc. 304 U. S. 518-539;
Standard Oil Co. v. California, 291 U. S. 242-245;
Arlington Hotel v. Fant, 73 L. ed. 447, 278 U. S. 439;
[fol. 20] State v. Unzeuta, 281 U. S. 138; 74 L. ed. 761;
Surplus Trading Co. v. Cook, 281 U. S. 647, 74 L. ed. 1091;
Hartford Acc. etc. v. Delta, etc. 292 U. S. 143; 78 L. Ed. 1178;
Home Ins. Co. v. Dick, 281 U. S. 397; 74 L. ed. 926;
Estate of Thornton, 1 Cal. 5.

From the case of Home Insurance Co. v. Dick, supra, we quote as follows:

"Second. The Texas statute as here construed and applied deprives the garnishees of property without due process of law. A state may, of course, prohibit and declare invalid the making of certain contracts within its borders. Ordinarily, it may prohibit performance within its borders, even if contracts validly made elsewhere, if they are required to be performed within the state and their performance would violate its laws. But, in the case at bar, nothing in any way relating to the policy sued on, or to the contracts of reinsurance, was ever done or required to be done in Texas. All acts relating to the making of the contracts of reinsurance were done there or in New York. And, likewise, all things in regard to performance were to be done outside of Texas. Neither the Texas laws nor the Texas courts were invoked for any purpose, except by Dick in the bringing of this suit. The fact that Dick's permanent residence was in Texas is with-
[fol. 21] out significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against depriva-

tion of property without due process of law: Compania General de Tabacos de Filipinas v. Collector of Internal Revenue, 275 U. S. 87, 72 L. ed. 177, 48 Sup. Ct. Rep. 100; Aetna L. Ins. Co. v. Dunken, 266 U. S. 389, 69 L. ed. 342, 45 Sup. Ct. Rep. 129; New York L. Ins. Co. v. Dodge, 246 U. S. 357, 62 L. ed. 772, 38 Sup. Ct. Rep. 337, Ann. Cas. 1918E, 593. Compare Modern Woodmen v. Mixer, 267 U. S. 544, 551, 69 L. ed. 783, 785, 41 A. L. R. 1384, 45 Sup. Ct. Rep. 389."

We see nothing in the Brief of petitioner in Consolidated Milk Producers v. Parker, which justifies the power of the State in interfering with these contracts or having to do in any way with sales and deliveries in Moffett Field, or any other Federal ceded territory. The state cannot do indirectly what it could not do directly. It cannot punish or recall a license, which is a punishment, for acts performed within Federal territory of Moffett Field. The argument of the brief in that case that the Presidio is within the State and is therefore subject to regulation is easily answered. Moffett and Presidio Fields are within the State geographically, but they are not within the State [fol. 22] sovereignty. Exclusive jurisdiction, as Justice Story says, means exclusive legislation.

United States v. Cornell, Federal Cases 14867 (1819).

Respectfully submitted, Vincent W. Hallinan, Carey Van Fleet, Attorneys for Petitioner.

[fol. 23] [File endorsement omitted.]

[fol. 24] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

RETURN OF RESPONDENTS TO PETITION FOR WRIT OF MANDATE AND TO ALTERNATIVE WRIT OF MANDATE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF—Filed December 3, 1941

Now moves the respondents above named and present this their return to the petition for writ of mandate heretofore filed herein and to the alternative writ of mandate issued herein on the 25th day of November, 1941.

Respondents allege that said petition does not state facts sufficient to constitute a cuase of action or to enable petitioner to the relief prayed for in said petition or to any relief.

Wherefore, respondents pray that petitioner take noth-
[fol. 25] ing by said petition and that the alternative writ of mandate heretofore issued herein be discharged and that the proceedings herein be dismisseed.

Dated: December 3, 1941.

Earl Warren, Attorney General of the State of California; W. T. Sweigert/s, Assistant Attorney General; W. R. Augustine/s, Deputy Attorney General, Attorneys for Respondents.

[fol. 26] In Supreme Court of California, in Bank.

Pacific Coast Dairy, Inc.,

v.

Department of Agriculture, etc., et al.

Order Granting Alternative Writ of Mandate—Filed November 24, 1941

Let an alternative writ of mandate issue in the above entitled matter, returnable before this Court in bank at its courtroom in San Francisco, on December 3, 1941, at ten o'clock a. m.

Dated: Nov. 24, 1941.

Gibson, Chief Justice.

[File endorsement omitted.]

[fol. 27] In Supreme Court of California

[Title omitted]

Docket Entries

Nov. 18, 1941. Filed petition for writ of mandate and P&A.

Nov. 24, 1941. Alternative writ of mandate ordered to issue, returnable in S. F. Dec. 3, 1941.

Nov. 25, 1941. Alternative Writ of Mandate issued.

Dec. 3, 1941. Matter (mandate) called. On oral stipulation petitioner granted 10 days to file brief; respondent 5 days to reply thereto. Matter then to be submitted. W. E. Licking, Assistant U. S. Attorney, granted leave to file brief as a. c. on behalf of the United States of America within 10 days.

Dec. 3, 1941. Filed return to petition for writ of mandate and alternative writ of mandate and p&a in support thereof.

Dec. 10, 1941. Filed additional auth. on pet. for writ of mandate.

Dec. 15, 1941. Filed Petitioner's Memo. in reply to return of resps.

1942

Jan. 13. Matter submitted.

Jan. 16. Filed brief of Frank J. Hennessey, U. S. Atty. and Wm. E. Licking, Asst. U. S. Atty. as a. c. on behalf of the United States.

Jan. 23. Filed respondent's reply to petitioner's memo. and brief of A. C. (U. S.)

Mar. 12. The alternative writ of mandamus is discharged and the petition for a peremptory writ is denied.

Traynor, J.

We concur; Gibson, C. J., Curtis, J., Shenk, J., Houser, J., Edmonds, J., Carter, J.

March 17. By the Court: The opinion heretofore rendered herein is amended by the insertion of the following in the paragraph next to the last, after the word "competition" in the fifth line from the end of the paragraph: "(10 U. S. C. sec. 1201) and Regulation 5-240 (g) of the United States Army provides that it is impracticable to secure such competition".

[fol. 27a] IN SUPREME COURT OF CALIFORNIA

[File endorsement omitted]

OPINION—Filed March 12, 1942

In 1935 the California legislature passed an act regulating the marketing and distribution of fluid milk and fluid cream. (Cal. Agric. Code, div. 4, ch. 10, secs. 735-738.)

The act declares that it is the policy of the state to promote the intelligent production and orderly marketing of such essential commodities as milk; that an adequate supply of wholesome milk is vital to the public health; that the production, transportation, processing, storage, distribution, and sale of milk and cream therefore constitute an industry affected with a public interest; and that unfair and destructive trade practices in the production, marketing, and distribution of milk and cream have menaced the public health by undermining sanitary regulations, which cannot of themselves guard against serious deterioration in the supply of milk. (Agric. Code, sec. 735.) It sets forth as one of its objectives the elimination of "speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchased from producers. * * *"

The act as amended (Cal. Stats. 1937, ch. 3, 413, 710; Stats. 1941, ch. 1214) empowers the Director of Agriculture to set up defined marketing areas within the State, to prescribe minimum prices for fluid milk and fluid cream to be paid by distributors to producers in accordance with stabilization and marketing plans for such areas (secs. 735.4 (b) (4) (5) and 736.3 (b) (c)), to prescribe minimum wholesale and retail prices of fluid milk and fluid cream within each area (Agric. Code, secs. 736.11, 737.12), to license milk distributors within each area, to revoke or suspend licenses for violation of any stabilization and marketing plan, and to bring actions to enjoin such violations. (Agric. Code, sec. 737.7.)

The petitioner seeks a writ of mandamus ordering the Director of Agriculture to dismiss proceedings undertaken pursuant to section 737.11 of the Agricultural Code with the object of revoking petitioner's license. In these proceedings it is alleged that petitioner violated section 737.3 (a) (6) of the code and of the Stabilization and Marketing Plan for the Santa Clara Marketing Area by purchasing, processing, bottling, transporting, and delivering in the Santa Clara Marketing Area fluid milk that it sold to the Federal Government for less than the minimum wholesale prices prescribed for that area. The sale occurred on Moffett Field, territory within the geographic boundaries of the Santa Clara Marketing Area, but subject to the exclusive jurisdiction of the federal government.

Since the demand for fluid milk fluctuates from day to day and cannot be anticipated exactly, the producers must supply enough milk to meet all reasonable needs; then any surplus, or "stand by," is converted into milk products and sold by the distributors at lower prices, with corresponding lower receipts for the producers. The possibility of a surplus has been a constant threat to the stability of prices paid to the producers, given the reluctance of distributors to pay the full price for milk that becomes in part converted into milk products. A stabilization plan counteracts this downward pull by establishing minimum prices for fluid milk. At the end of a given period, the distributor settles his accounts with the producer by paying him a "blended price" representing the price for fluid milk bought less the difference between that price and the price for the milk converted into milk products. Even then the [fol. 27b] producer does not know what the blended price will be until the expiration of the period for settling accounts. The minimum price of fluid milk, however, represents a fixed element in the blended price that affords him at least some protection against speculation at his expense in the distribution of milk. If the distributor were under no compulsion to pay a minimum price he would seek to shift to the producer the risk of speculation in a fluctuating market by paying him the lowest possible price, not only for fluid milk sold to consumers but for milk converted into milk products, and there would soon be adverse effects on standards of production.

The same adverse effects would result if the minimum price established by a stabilization plan were not uniformly enforced. The act itself anticipates that possibility by specifying that there may be no departures from the minimum price even when the milk is sold to the federal government on territory within the exclusive jurisdiction of that government. Section 736.3 (a) provides that any stabilization and marketing plan shall prohibit distributors and retail stores from engaging in such unfair practices as:

"(7) The payment of a lesser price by a distributor to any producer for fluid milk or fluid cream which is distributed to any person, including agencies of the Federal, State or local government, located upon property within the geographical limits of any marketing area for less than

the minimum prices established by the director to be paid by distributors to producers for fluid milk or fluid cream for said marketing area.

"(8) The purchasing or receiving of any fluid milk or fluid cream by distributors from producers within a marketing area wherein a stabilization and marketing plan is in effect for less than the minimum prices established in such plan, regardless of whether such milk or cream is subsequently sold or distributed within or without such marketing area, or within or without the jurisdiction of the State of California."

The validity of such provisions is clear. (*Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346; *Alabama* v. *King and Boozer*, 62 Sup. Ct. 43; *James* v. *Dravo Contracting Co.*, 302 U. S. 134.)

In its original form in 1935 the milk control act prescribed minimum prices to the producers only. To prescribe such prices without also prescribing minimum resale prices is ineffectual, however, since the distributors cannot pay the producers the prescribed prices unless they have some guarantee of corresponding returns. Minimum resale prices, moreover, must govern all transactions, particularly those of the producer who is his own distributor and who is otherwise apt to sell to consumers at prices below those at which regular distributors are required to operate. In the light of these considerations, Article 2A was added in 1937 to provide for minimum wholesale and retail prices. Section 736.11 provides that in all marketing areas where a [fol. 27c] stabilization and marketing plan is in effect the Director of Agriculture shall prescribe minimum wholesale prices at which milk shall be sold by distributors to retail stores, and minimum retail prices at which fluid milk shall be sold by distributors and retail stores to consumers. Section 736.12 provides that in determining minimum prices for any marketing area the director shall make an investigation relative to that area of such factors as the quantities of fluid milk distributed and normally required by consumers, the price to distributors and their handling costs, and the available capacity for processing and distributing. Section 736.13 prohibits sale by distributors at less than the prescribed prices.

The most real danger to the prescribed minimum lies in sales by distributors at lower prices on areas within the exclusive jurisdiction of the federal government, where transactions cannot be regulated by the State. Prescribed minimum prices fail of their purpose if they lie in the shadow of cut prices. The route of the milk from the producer to the consumer is a continuous one even when it crosses the imaginary line that demarcates federal jurisdiction, and the evil effects of substandard prices in the federal area course backward to play their part in undermining the intelligent production and orderly marketing that the State has declared essential to the public health. The State has therefore undertaken to regulate the milk industry within the bounds of its jurisdiction in such a manner as to obviate the elusive evils that it could not directly attack. Section 736.3 (a) (6) of the Agricultural Code provides that any stabilization and marketing plan shall prohibit distributors and retail stores from engaging in such unfair practices as,

"(6) The purchasing, processing, bottling, transporting, delivering or otherwise handling in any marketing area of any fluid milk or fluid cream which is to be or is sold or otherwise disposed of by such distributor at any place in the geographical area within the outer, outside and external boundaries or limits of such marketing area, whether such place is a part of the marketing area or not, at less than the minimum wholesale and minimum retail prices effective in such marketing area."

The Stabilization and Marketing Plan for the Santa Clara Marketing Area contains the provisions outlined by this section. These regulations are directed at the milk before it can enter the stronghold of an area within the State's boundaries but outside its jurisdiction on terms that would menace the entire milk supply. The alleged violation in the present case is the purchasing, processing, bottling, transporting, delivering, and other handling of milk within the Santa Clara Marketing Area for prospective sale at a point outside the jurisdiction of the State at prices less than the minimum prescribed for that marketing area. Petitioner contends that the State's control over activities within its jurisdiction affords it no authority to impose penalties

because of transactions on Moffett Field. This contention proceeds from the theory that such penalties violate the due process clause of the 14th Amendment to the Constitution of the United States, denying to a State the power to restrict or control activities, persons, and property beyond [fol. 27d] its jurisdiction. (*Standard Oil Co. of California* v. *California*, 291 U. S. 242; *Allgeyer* v. *Louisiana*, 165 U. S. 578; *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U S. 346; *Compania General de Tabacos de Filipinas* v. *Collector of Internal Revenue*, 275 U. S. 587; *Home Ins. Co.* v. *Dick*, 281 U. S. 397.) This contention, however, confuses the State's control over activities, persons, and property within its jurisdiction and the repercussions of that control in areas outside thereof. The question is not whether the State can prescribe the minimum prices at which milk may be sold on the territory within the exclusive jurisdiction of the United States (*Cf. Consolidated Milk Producers* v. *Parker*, this day decided), but whether it has power to regulate acts within its jurisdiction even though they are followed in direct line of succession by a transaction outside its jurisdiction.

It is established that a State may validly regulate activities, persons, and property within its jurisdiction, even though extra-territorial repercussions ensue, whenever such regulation is vital to the welfare of its inhabitants. The propriety of the regulation is determined by its focus upon an internal problem and not by the range of its influence. Thus, in *Mirkovitch* v. *Milnor*, 34 Fed. Supp. 409, the court held that the State could exercise its police power over boats within State waters in a manner that was bound to affect their activities beyond State borders. Threatened with the depletion of its fish supply by the practices of certain fishermen, California provided in the Fish and Game Code that no person shall use a boat in this State or its waters that delivers to any point outside the State fish caught from the boat in the waters of the Pacific Ocean within the State or on the high seas or elsewhere without authorization of the Fish and Game Commission. The court pointed out that the code provision related solely to the operation within State waters of fishing vessels delivering their catch outside the State, and emphasized that the provision was designed not to regulate fishing operations beyond the State's jurisdiction but to protect the State's fisheries from depletion. The realization that the plaintiff

might be unable to carry on fishing operations beyond the State's jurisdiction without entering and operating his boat within State waters did not deter the court from declaring that the statute was a valid exercise of the State's police power over acts within its jurisdiction.

In *Osborn* v. *Ozlin*, 310 U. S. 53, the United States Supreme Court upheld a Virginia statute requiring that insurance policies for persons or property in Virginia written by companies authorized to do business in Virginia be countersigned by a local agent receiving a certain percentage of the commission, even though insurer and insured are both outside of Virginia when the contract of insurance is negotiated. The close relation between the insurance contracts and the insured persons or property, together with [fol. 27e] the State's interest in protecting such persons and property, justified the regulation despite its extraterritorial effect. The court stated: "But the question is not whether what Virginia has done will restrict appellant's freedom of action outside Virginia by subjecting the exercise of such freedom to financial burdens. The mere fact that State action may have repercussions beyond State lines is of no judicial significance so long as the action is not within that domain which the Consfitution forbids. • • • Virginia has not sought to prohibit the making of contracts beyond her borders. She merely claims that her interest in the risks which these contracts are designed to prevent warrants the kind of control she has here imposed. This legislation is not to be judged by abstracting an isolated contract written in New York from the organic whole of the insurance business, the effect of that business on Virginia, and Virginia's regulation of it." (Pages 62-63.) (See, also, *Holmes* v. *Springfield Fire & Marine Insur. Co.*, 51 Sup. Ct. 19; 32 Fed. Supp. 964; *National Fire Ins. Co.* v. *Wanberg*, 260 U. S. 71, and *Palmetto Fire Ins. Co.* v. *Conn.*, 272 U. S. 295; Brandeis's dissent in *New York Life Ins. Co.* v. *Dodge*, 246 U. S. 357, 377; *cf. Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426.

Again in the application of State workmen's compensation laws, it is established that where the injury occurs in one state and the contract of employment is entered into in another, the statute of the state with the greater interest in the welfare of the injured workman controls. (*Alaska Packers Assn.* v. *Industrial Acc. Com. of California*, 294 U. S. 532; *Pacific Employers Ins. Co.* v. *Industrial Acc.*

Com. of California, 10 Cal. (2d) 567.) In the Alaska Packers case the California Workmen's Compensation Act was held applicable to an injury sustained in Alaska by a workman who resided in California and entered into the contract of employment here. The court noted California's interest in the welfare of the injured workman, stating: "Obviously the power of a state to effect legal consequences is not limited to occurrences within the state if it has control over the status which gives rise to those consequences." (Page 541.) (See, also, *J. C. Penney Co.* v. *Wisconsin Tax Com.*, 311 U. S. 435; *Great Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412; *Nelson* v. *Sears Roebuck Co.*, 61 Sup. Ct. 586.)

The foregoing cases establish that a State may exercise its power over things within its jurisdiction in the knowledge that it will thereby influence things beyond its jurisdiction, and that its influence may be far reaching, so long as the external consequences remain incidental to the solution of internal problems. Their application to the present case is clear. In accomplishing the objectives of the State Milk Control Act the State is concerned, not with the destination and sale of the milk but with the effect of the price [fol. 27f] of the milk upon the conditions of production. A price below the fixed minimum for milk produced in the State endangers those established standards for the milk industry that safeguard the public health, and leads successively to a breakdown of the law, price cutting, diminishing returns to the producers, inferior standards of milk production and finally injurious effects on the public health. The State has regulated the purchasing, processing, bottling, transporting and handling of fluid milk within its jurisdiction with the object, not of controlling transactions beyond its jurisdiction, but of stabilizing within its jurisdiction the production of a commodity vital to the public health.

The State Milk Control Act, however clear its validity under the due process clause, must be scrutinized further in the light of the commerce clause and the Federal Agricultural Marketing Agreement Act of 1937 (50 U. S. Stats. 246), held constitutional in *United States* v. *Rock Royal Co-op.*, 301 U. S. 533. The federal act authorizes the Secretary of Agriculture to enter into marketing agreements fixing minimum prices to be paid producers for milk that is "in the current of interstate or foreign commerce" or that

"directly burdens, obstructs or affects interstate or foreign commerce." (Sec. 8 (c) (1), (2), (5), (7), (8), and (18)). It defines interstate or foreign commerce as "commerce between any State, Territory or possession, or the District of Columbia, but through any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory, or possession, or the District of Columbia. For the purpose of this chapter • • • a marketing transaction in respect to an agricultural commodity or product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. • • • As used herein, the word 'State' includes Territory, the District of Columbia, possessions of the United States, and foreign nations." (Sec. 10(j)). The extensiveness of this definition leaves no doubt that Congress intended to cover the broadest possible field that might come within its powers to regulate interstate commerce and to govern territories.

The shipments of milk from California to such areas as Moffet Field, where the transit ends, fall within this definition of interstate commerce, for Moffett Field can be classified as either a territory or possession of the United States outside the jurisdiction of California, even though within the State's boundaries.

The contention is nevertheless advanced that transactions between such federal areas as Moffet Field and the rest of the State do not come within the power of Congress to regulate interstate commerce, because such areas do not fall within the categories of States, foreign nations, or Indian tribes set forth in the commerce clause. The judicial interpretation of the commerce clause, however, has greatly amplified the meaning of interstate commerce. Thus, [fol. 27-g] commerce between States and territories has long been rec ed as interstate commerce. (*Hanley* v. *Kansas City So. y. Co.*, 187 U. S. 617; *Inter Island Steam Navigation Co.* v. *Hawaii*, 92 Fed. (2d) 412, aff'd 305 U. S.

306. Commerce between States and the District of Columbia is similarly recognized as interstate commerce. (*Stoutenburgh* v. *Hennick*, 129 U. S. 141; *Galloway* v. *Bell*, 11 Fed. (2d) 558.) Such areas as Moffett Field are in the same category as the District of Columbia, for the same power of Congress extends over them both. (U. S. Const., Art. I, sec. 8, cl. 17; *Surplus Trading Co.* v. *Cook*, 281 U. S. 647; *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525.) In the light of the foregoing cases it is clear that the power of Congress to regulate interstate commerce, reinforced by its authority over territories and "forts, magazines, arsenals, dockyards and other needful buildings" enables it to regulate commerce between States and such areas as Moffett Field. (Compare *People* v. *Standard Oil Co.*, 218 Cal. 123; *Grayburg Oil Co.* v. *State*, 286 S. W. 789; *Grayburg Oil Co.* v. *State*, 3 S. W. (2d) 427, and *McKesson & Robbins* v. *Collins*, 18 Cal. App. 648, which did not involve any federal statute regulating such commerce.)

The milk industry in California is dominantly a local one. Only a small percentage of the milk produced goes beyond the jurisdiction of the State, but whatever the destination of the milk, the State is vitally concerned with the stabilization of the industry, and particularly with standards of production, in the State as a whole. The federal territory within the State is so fragmented that there may be several federal islands within a single marketing area. If they are citadels of immunity from State jurisdiction, they are also exceptional segments in areas that are otherwise subject to that jurisdiction. They stand out like colored pins on the map of California, and range from military reservations to soldiers' homes, from court houses to penitentiaries, from post offices to Indian reservations, from national parks to regional dams. (See cases cited in 38 Columbia L. Rev. 128, at 130.) The commerce between them and the rest of the State is of the greatest interest to the State regardless of the circumstance that it may be regulated by the federal government. Focussed as it is upon a State problem, the State act, despite its repercussions upon interstate commerce, does not run counter to the commerce clause so long as it does not conflict with the provisions or objectives of Congressional legislation. (*Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346; *Duckworth* v. *Arkansas*, 62 Sup. Ct. 311; *California* v. *Thompson*, 313 U. S. 109; *South Carolina State Highway*

Dept. v. *Barnwell Bros.*, 303 U. S. 177. See 27 Cal. L. Rev. 615.)

The objectives of the federal act in fixing the minimum price payable by the distributor to the producer are the same as those of the California act, namely, to insure to the producer a reasonable return on his products (secs. 1 [fol. 27-h] and 2), and to the consumer a "sufficient quantity of pure and wholesome milk." (Sec. 8 (c) (18).) There is no federal marketing agreement or order with respect to the milk industry, however, now in effect in this State. Where a conflict is apparent the State legislation must yield. (*United States* v. *Wrightwood Dairy Co.*, 62 Sup. Ct. 523; *Cloverleaf Butter Co.* v. *Patterson*, 62 Sup. Ct. 491.) There is a question, however, whether any conflict exists when a federal administrative officer is empowered to prescribe regulations in a field already regulated by a State but does not actually do so. The United States Supreme Court has held in some cases that a conflict of authority is inherent in such a situation by interpreting the failure of the federal officer to make any regulation as in effect a ruling that neither federal nor State regulation is necessary. (*Oregon-Washington R. R. Co.* v. *Washington*, 270 U. S. 87; *Napier* v. *Atlantic Coast Line Ry. Co.*, 272 U. S. 605.) There is a growing tendency on the part of the court, however, to emphasize the evils arising from the absence of any regulation, and to hold therefore that the existence of an unexercised superior federal authority does not rule out State regulation vital to the public welfare. This realistic view germinated in cases upholding State regulation of certain public utility practices that the Interstate Commerce Commission did not regulate although it had authority to do so. (*Northwestern Bell Telephone Co.* v. *Ry. Commission*, 297 U. S. 471; *Missouri Pacific Ry.* v. *Larabee Flour Mills Co.*, 211 U. S. 612.) The court has balanced, not the State regulation against the unexercised federal authority, but the importance of the State's objectives against the effects of its regulation on interstate commerce. It has rejected the theory that the failure of a federal administrative agency to exercise its authority necessarily amounts to a declaration against all regulation. Indeed, in *H. P. Welsh Co.* v. *New Hampshire*, 306 U. S. 79, it demonstrated its concern with keeping the State regulation alive in the absence of immediate conflict with federal regulation. It upheld in that case the application of a

state act regulating the hours of drivers of motor carriers to a driver transporting an interstate shipment, even though the Interstate Commerce Commission had overlapping authority and had issued regulations that would conflict with the state act when they became effective two years later. The court took the view that the safety of the people should not wait upon federal administrative action. (See, also, *Kelly* v. *Washington*, 302 U. S. 1; *South Carolina State Highway Dept.* v. *Barnwell Bros., supra; Eichholz* v. *Commission*, 306 U. S. 268; *Maurer* v. *Hamilton*, 309 U. S. 598; *Mintz* v. *Baldwin*, 289 U. S. 346.)

Public health, like public safety, is a vital concern of the State, and its maintenance at proper levels should likewise not wait upon federal regulation. Toward that maintenance the California Milk Control Act contributes largely, [fols. 27i-31] but it might well be disrupted if those engaged in interstate commerce escaped the State regulation while they were untouched by corresponding federal regulation. The absence of federal regulation may well be a recognition not only of the propriety but of the effectiveness of State regulation in the stabilization of a dominantly local industry, rather than a ruling that there should be no regulation.

There remains the question whether the Milk Control Act can validly affect milk sold to instrumentalities of the United States. In a brief filed as *amicus curiae* on behalf of the United States, the United States Attorney contends that the application of the State act to such milk would unduly burden the operation of an essential federal agency, and that it is inconsistent with the federal statutes requiring that army supplies be secured through competitive bidding. (41 U. S. C., sec 5; 10 U. S. C., secs. 1200-1201.) Federal agencies, however, cannot entirely escape the effects of State legislation. The California Milk Control Act does not discriminate against the United States army nor substantially hinder its efficient operation. The army is not precluded from obtaining milk, nor required to pay more for such milk than other consumers in the same area. The act regulates not the army but the distributors who are independent contractors with the federal government. It is settled that such contractors are subject to State control, and that consequent burden on the federal government is speculative and remote. (*Milk Control Board* v. *Gozzelin's*

Dairy, Inc., 16 N. E. (2d) 641; *Paterson Milk & Cream Co., Inc.* v. *Milk Control Board*, 118 N. J. L. 383; *Alabama* v. *King & Boozer*, 62 Sup. Ct. 43; *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *Atkinson* v. *State Tax Com. of Oregon*, 303 U. S. 66; *Van Cott* v. *Utah*, 306 N. S. 511; *Helvering* v. *Gerhardt*, 299 U. S. 437; *Trinity Farm Const. Co.* v. *Grosjean*, 291 U. S. 466; see 27 Cal. L. Rev. 327.) The very federal statutes requiring competitive bidding except cases "where it is impracticable to secure competition" (10 U. S. C. sec 1201), and Regulation 5-240 (g) of the United States Army provides that it is impracticable to secure such competition: "(3) When the price is fixed by Federal, State, municipal, or other competent authority." (*Penn Dairies, Inc.* v. *Milk Control Commission*, (March 25, 1941) Court of Common Pleas of Lancaster County, Pennsylvania; *Commonwealth* v. *Rohrer* (Pa.), 37 D. & C. 410.)

The alternative writ of mandamus is discharged and the petition for a peremtory writ is denied .

We concur: Traynor, J.; Gibson, C. J.; Curtis, J.; Shenk, J.; Houser, J.; Edmonds, J.; Carter, J.

[fol. 28] [File endorsement omitted.]

[fol. 29] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 4, 1942

Comes Now Pacific Coast Dairy, Inc., a corporation, petitioner herein, and states that on the twelfth day of March, 1942 this Court entered judgment against it denying its petition for a writ of mandamus.

Petitioner, believing that the judgment of this Court is incorrect, prays that it may be allowed to appeal to the Supreme Court of the United States for reversal of the [fol. 30] judgment of this Court, and that a transcript of the record of this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of the jurisdiction of the Su-

preme Court of the United States to entertain an appeal in this case.

Pacific Coast Dairy, Inc., a corporation, by Carey Van Fleet, Vincent W. Hallinan, Attorneys for Petitioner.

[fol. 31] [File endorsement omitted.]

[fol. 32] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 4, 1942

The court erred:

1. In holding that the Agricultural Code of California and particularly Section 736.3 (a) (6) is constitutional when applied to a sale and delivery of milk made by the appellant in a Federal territory which, by virtue of Art. I, Sec. 8, Par. 17, of the Constitution of the United States, [fol. 33] is within the exclusive jurisdiction of the United States.

2. In failing to hold that the act in question is unconstitutional in that it constitutes an attempted exercise of control over transactions in a federal enclave outside the state's jurisdiction.

3. In failing to hold that the act is unconstitutional because it constitutes a direct interference with the purchasing and furnishing of supplies by the United States Army.

4. In failing to hold that the statute is unconstitutional because it undertakes to lay a burden upon and to control commerce between the State of California and a Federal military reservation contrary to the Commerce Clause of the Constitution.

5. In failing to hold that the act is unconstitutional because it interferes and conflicts with the competitive bidding statutes of the United States. R. S. 3709 (41 U. S. C. 5); Act of July 5, 1884, c. 217, 22 Stat. 106, 109; Act of June 30, 1902, c. 1328, 32 Stat. 507, 514 (10 U. S. C. 1200-1201).

6. In failing to hold that the statute is unconstitutional because it constitutes an attempt on the part of the State

[fols. 34-57] to exercise supervision and control over the contracts of the United States.

7. In failing to hold that the act is unconstitutional because it attempts to regulate the terms upon which State citizens may contract with the United States.

8. In failing to hold that the act is unconstitutional because it deprives Pacific Coast Dairy, Inc., of its license without due process of law.

Pacific Coast Dairy, Inc., by R. Carey Van Fleet, Vincent W. Hallinan, Attorneys for Petitioner.

[fol. 58] [File endorsement omitted.]

[fol. 59] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ALLOWING APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 4, 1942

This cause having come before this Court on this 4th day of June, 1942, upon the petition of Pacific Coast Dairy, Inc., a corporation, the petitioner herein, praying for leave to appeal to the Supreme Court of the United States for reversal of the judgment herein and that a duly certified copy of the record of this cause be transmitted to the Clerk [fol. 60] of the Supreme Court of the United States, and the Court having heard and considered this motion, together with petitioner's statement showing the basis of the jurisdiction of the Supreme Court of the United States to entertain an appeal in this cause, the same having been duly filed with the Clerk of the Court, it is, therefore, by the Court

Ordered and Adjudged that Pacific Coast Dairy, Inc., a corporation, petitioner herein, be and is hereby allowed an appeal from the order and judgment of this Court, dated March 12, 1942, and that a duly certified copy of the record be transmitted to the Clerk of the Supreme Court of the United States.

It is Further Ordered that Pacific Coast Dairy, Inc., be and it is hereby permitted a period of sixty days from the

date hereof within which to file and docket this appeal to the Supreme Court of the United States.

Dated: This 4th day of June, 1942.

John W. Shenk, Acting Chief Justice.

[fols. 61-63] Citation in usual form showing service on Earl Warren, et al., filed June 4, 1942, omitted in printing.

[fol. 64] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER FIXING AMOUNT OF BOND—Filed June 6, 1942

The amount of bond on appeal to the United States Supreme Court, in the above entitled cause, is hereby fixed at Five Hundred Dollars.

(Signed) John W. Shenk, Acting Chief Justice.

[File endorsement omitted.]

[fols. 65-68] Bond on appeal for $500.00, approved and filed June 18, 1942, omitted in printing.

[fol. 69] [File endorsement omitted]

[fol. 70] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed June 4, 1942

To the Clerk of the Supreme Court of the State of California:

SIR:

You are hereby requested to prepare a transcript of the record to be filed in the Supreme Court of the United States

pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following:

Pleadings, all docket entries, opinion of the Court, order [fol. 71] of the Court entering judgment, and all papers filed with the Court in the above entitled cause since the entry of judgment.

Respectfully submitted, Pacific Coast Dairy, Inc., by Carey Van Fleet, Vincent W. Hallinan, Attorneys for Petitioner.

[fol. 72] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 73] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF RECORD AND POINTS RELIED ON—Filed August 5, 1942

Pursuant to Rule 13, Par. 9 of this Court, the Appellant states that it intends to rely on all of the points in its assignment of errors.

The Appellant deems the entire record as filed in the above entitled cause necessary for the consideration of the points relied upon.

Carey Van Fleet, Attorney for Appellant.

[fol. 74] AFFIDAVIT OF SERVICE

Carey Van Fleet, being duly sworn, deposes and says: That he is the attorney for the Appellant, Pacific Coast Dairy, Inc., in the above entitled cause; that on this day, the 5th day of August, 1942, he served a copy of the within Statement of Points and Designation of Record on the attorney for the Respondents, to-wit: the Attorney General of the State of California, by registered mail addressed to the Attorney General of the State of California, State Building, San Francisco, California, and deposited it in the United States Post Office of Washington, District of Columbia, there being a direct communication by mail be-

tween the City of Washington, D. C. and the City of San Francisco, State of California.

Carey Van Fleet.

Subscribed and sworn to before me this 5th day of August, 1942. Anne Snure, Notary Public. (Seal.)

[fol. 74a] [File endorsement omitted.]

[fol. 75] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—October 12, 1942

The statement of judisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court in this case is postponed to the hearing of the case on the merits. Counsel are requested in their briefs and on the argument to discuss whether the judgment sought to be reviewed is final within section 237 of the Judicial Code. Compare Grays Harbor Logging Co. vs. Coats-Fordney Co., 243 U. S. 251, and Wick vs. Superior Court, 278 U. S. 575, with Bandini Co. vs. Superior Court, 284 U. S. 8.

The Solicitor General is invited to submit a brief in this case, and if he so desires to participate in the oral argument.

Endorsed on cover: File No. 46,776. California Supreme Court. Term No. 275. Pacific Coast Dairy, Inc., Appellant, vs. Department of Agriculture of the State of California, et al. Filed June 31, 1942. Term No. 275, O. T., 1942.